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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,744	09/05/2003	James A. Donovan	130130	9076

7590 05/17/2005

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EXAMINER

DUONG, THO V

ART UNIT PAPER NUMBER

3743

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/656,744	Applicant(s) DONOVAN, JAMES A.	
	Examiner Tho v Duong	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of applicant's amendment filed 2/18/2005 is acknowledged. Claims 18 are pending.

In view of the amendment filed 2/18/2005, the previous objection to the drawing and the 112 rejections against the claims have been withdrawn.

Response to Arguments

Applicant's arguments filed 2/18/2005 have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, reference to Cheney was not relied on to teach the location of the heat source and the heated object but to teach the use of mixing a super cooled liquid of sodium acetate and sodium actate in crystal form to generate heat by crystallization. Reference to Bell discloses (figures 1K and 1 L) that the towels are in contact with the heat source and is not part of the heat source. Applicant's argument that the heat source of Cheney is not capable of generating heat up to 130 F has been very carefully considered but is not found to be persuasive since Cheney discloses the same material "sodium acetate" to generate heat as claimed, it is inherently that the temperature of the heat source can be up to 130F. Furthermore, applicant's argument that Cheney's heat source is not capable of generating the heat required in Bell has been very carefully considered but is not found to be persuasive since Bell does not disclose any required amount of heat for the towels. Moreover, it is clearly that the temperature of the towels needed to be heated up to, depends on its intend of

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use and can be any temperature that is higher than the temperature of the towel itself.

Furthermore, Cheney's heat source is capable to generating heat up to 130F and can be used in Bell's device for the purpose of controlling amount of heat and duration of the device easily and avoiding any chemical reaction.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation that a heat source is "in contact with but separate from said at least one towel (means)" renders the scope of the claim indefinite since it is not clear what the applicant is claiming since "in contact" and "separate" have two opposite meaning, it is not clear how a towel can be both "in contact" and "separate" at the same time.

Claims 1-18 are further rejected as can be best understood by the examiner in which the towel is in contact with the heat source but is not part of the heat source (separate parts).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7-11 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al. (US 6,289,889) in view of Cheney III (US 5,143,048). Bell discloses (figures 1B, 1K, 1L and column 8, lines 30-36) a device for providing warm a plurality of towels or wipes comprising an outer package contains plurality of towels; a heat source (7) being in contact with but separate from the towel (not part of the towel) comprising a frangible container containing a quantity of heat-producing composition in a compartment (9) and a quantity of activating solid in a separated compartment (11) so that upon flexing the frangible container, heat is generated by contact of the heat-producing composition and the activating solid; and the heat source (7) is surrounded in the middle of the towels. Bell further discloses (column 13, line 24-34) a temperature indicator is on the package to indicate the temperature of the towels or product to be heated. Bell does not disclose that the heat-producing composition and the activating solid are of the same material and heat is generated by crystallization. Cheney discloses (figure 1 and column 1, lines 40-62) a disposable heat pack that has heat generated by crystallization of a super cooled liquid of sodium acetate and sodium acetate in crystal form (5) upon mixing the two together. Cheney further discloses that sodium acetate in super cooled liquid and crystal form are used so that the amount of heat and duration is easily controlled and any chemical reaction is avoided. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Cheney's teaching in Bell's device for the purpose of controlling amount of heat and duration easily and avoiding any chemical reaction. Cheney further discloses (column 2, lines 35-38) that hydroxyethyl cellulose is a thicken agent and is not the super cooled liquid. As regarding claims 3, since the prior art discloses the same material "sodium acetate" as claimed, it is inherently that the temperature of the heat pack can be up to 130 degrees F.

Claims 6,12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell and Cheney as applied to claims 1,7 and 113 above, and further in view of Kaiser et al. (US 4,296,161). Bell and Cheney substantially disclose all of applicant's invention except for the material of the towels. Kaiser discloses (column 1, lines 16-24) household towels and baby wipes have been known to made of fibers for the purpose of reinforcing the structure of the towels. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use Kaiser's teaching in the combination device of Bell and Cheney for the purpose of reinforcing the structure of the towels.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

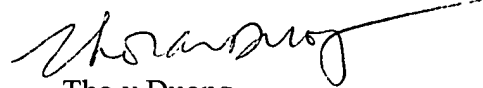
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tho v Duong whose telephone number is 571-272-4793. The examiner can normally be reached on M-F (first Friday off).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennet can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tho v Duong
Examiner
Art Unit 3743



TD
May 10, 2005